IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.L.P..No. 251 of 2007()

CC.102/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT -VI, NEYYATTINKARA

.....

PETITIONER/COMPLAINANT:

PRASANNA JUSA, DAYANA COTTAGE,
HARBOUR ROAD, VIZHINJAM, THOZHICHAL DESOM,
VENGANOOR VILLAGE.

BY ADV. SRI.P.V.ANIL

RESPONDENTS: ACCUSED & STATE

---

1. M.NISSAM, S/O.MUHAMMED ABDUL KHADER,
CITY TIME HOUSE, EAST FORT, THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED-R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO.251 OF 2007

Dated this the 6th day of June, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in C.C. No.102 of 2005 on the file of the Judicial First Class Magistrate's Court - VI, Nayyattinkara.

2. The petitioner had filed a complaint alleging that the accused - first respondent herein had borrowed form her an amount of five lakhs and issued Ext.P1 cheque in discharge of the said liability which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. On completing the procedure for notice etc. and on finding that the amount covered by the cheque was not paid, the complaint was filed. To prove the case against the accused, the complainant herself was examined as PW.1 and Exts.P1 to P6 were produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the transaction which led to the issuance of Ext.P1 cheque, the accused stated

that Ext.P1 cheque along with another cheque were issued to the husband of the petitioner with whom he had a chitty transaction. To prove his case, the accused was examined as DW.2 and the husband of the complainant was examined as DW.1 and Exts.D1 to D8 were produced. Ext.D8 is one of the cheques alleged to have been given by the accused to the husband of the complainant. The trial court found that the petitioner had not proved any transaction between herself and the accused and hence acquitted the accused.

3. This Court heard the learned counsel appearing for the petitioner elaborately. The main contention raised by the learned counsel for the petitioner is that the transaction between the petitioner and the first respondent had taken place and that the cheque in question was issued on 17.4.2002. Learned counsel also stated that the amount which the petitioner paid to the first respondent was from her own account and also from the amount she had received from her aunt.

4. The petitioner had not produced any records showing any transaction between herself and the accused. Except the statement of the petitioner, there is no other evidence to prove the alleged transaction. The trial court found that there was a transaction between the accused and the

husband of the complainant in connection with a chitty. The trial court also found that the petitioner failed to prove that the cheque in question was issued by the accused in her favour in discharge of any amount paid by her as alleged in the complaint. In the light of the principles laid down by the Apex Court in the decision reported in **Narayana Menon v. State of Kerala, 2006(3) K.L.T. 404,** it is the duty of the complainant to prove that the cheque was issued in discharge of a legally enforceable debt. If a transaction contemplated under Section 138 of the Negotiable Instruments Act is proved, the presumption available under Section 139 or Section 118 of the Negotiable Instruments Act cannot be claimed by the complainant. Considering the entire facts and the evidence adduced in the case, this Court is of the view that the impugned judgment requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/